IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4566 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHABHAI NARANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4566 of 2004

MR AMIT V THAKKAR for Petitioner No. 1-6

MS DS PANDIT AGP for Respondent No. 1

MR PRASHANT G DESAI for Respondent Nos.2 and 4

MR KK TRIVEDI for Respondent No.5

MR JAL SOLI UNWALA for Respondent Nos.6 to 8

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 02/11/2004

ORAL JUDGEMENT

Rule. Mr.DS Pandit, learned AGP for respondent

No.1, Mr.Prashant Desai, learned counsel for respondent Nos.2 to 4, Mr.KK Trivedi, learned counsel for respondent No.5 society, Mr.Unwala, learned counsel for the respondent Nos.6 to 8, waive service of rule for their respective clients.

2. With the consent of the parties, the matter is taken up for final hearing.

3. Upon hearing the learned counsel appearing for the parties, it appears that there is no dispute about the land allotted by the Surat Municipal Corporation to the petitioners, respondent No.5 society as well as respondent Nos.6, 7 and 8. There is also no dispute that as per the resolution of the Corporation, the area allotted to the respondent No.5 society is admeasuring 106.20 sq.mtrs.; whereas the area allotted to the petitioners as well as respondent Nos.6, 7 and 8 is admeasuring 734.80 sq.mtrs. and the area allotted to one Jayantilal Mohanlal Kundanwala etc. is admeasuring about 30 sq.mtrs. There is also no dispute on the point that the possession of the lands in question is handed over by the Corporation to the respondent No.5. So far as the allottees of the land i.e. the petitioners and others are concerned, it has been stated by the Corporation that they have deposited only 40% of the amount and therefore, balance amount is yet to be deposited and thereafter necessary steps shall be taken for handing over of the possession. Mr.Thakker, learned counsel for the petitioners as well as Mr.Unwala, learned counsel for the respondents submitted that their clients have also moved an application for bifurcation of the plot and the same is pending before the Corporation. However, Mr.Desai, learned counsel appearing for the Corporation submitted that as per his instructions, no such application is filed.

4. The grievance which is sought to be canvassed in this petition, in substance is that if proper ingress and outgress is not earmarked by the Corporation while permitting development of the land allotted to the petitioners or to respondent No.5 society, respondent Nos.6, 7 and 8 and others, the apprehension of the petitioners is that it may result into closure of the ingress and outgress of the main road. It is true that the Corporation has made allotment without providing condition for keeping area for the ingress and outgress of the persons concerned. Further, it also appears that the allotment made to the respondent No.5 society is different whereas the allotment made to the petitioners, respondent Nos.6, 7, 8 and others is common and

therefore, as the plot of the respondent No.5 as well as the plot allotted to the petitioners and respondent Nos.6, 7 and 8 is joint allotment, both facing road side, it was required for the Corporation to provide special arrangement with a view to see that there may not be future complication in case either of the allottees or allottees inter-se decides to develope the land for construction or otherwise, Mr.Thakker, learned counsel for the petitioners has submitted that in case either of the area is reserved by the Corporation by marking for ingress and outgress, the petitioners are ready to pay the price equivalent to the amount which may be fixed by the Corporation for such purpose. Mr.Unwala and Mr.Trivedi, learned counsel for the concerned respondents submitted that so far as their clients are concerned, they have already agreed to pay the amount which is fixed by the Corporation. It may be noted that the respondent No.5 society has already paid the full amount and therefore, in the event, if the direction is given by this Court to the Corporation marking the area for ingress and outgress on the front side of the road and when the petitioners are ready and willing to pay the said amount equivalent to area, the Corporation may be required to refund the said amount to the persons whose land is marked for ingress and outgress.

5. As the allotment is made to the respondent No.5 society is admeasuring only 106.20 sq.mtrs. and as the allotment is made to the petitioners and respondent Nos.6, 7, 8 and others is of 734.80 sq.mtrs plus 30 sq.mtrs i.e. totalling 764.80 sq.mtrs., it would be just and proper to direct the Corporation to mark the entry of ingress and outgress having width of 12 ft. and area to be provided for such ingress and outgress would be in proportion to the allotment made by the Corporation to the aforesaid respective persons. If the aforesaid proportion is taken into consideration, and as width of the ingress and outgress is to be maintained of 12 ft., around 2 ft. frontage adjacent to map at page 41 may be required to be deducted from the area allotted to the respondent No.5 society; whereas, frontage of about 10 ft. from B to C beginning from-B and falling in the area of marking B to C on map page No.41, may be required to be reserved from the allotment made to the petitioners and the respondent Nos.6,7,8 and others because there is joint and common allotment. The Corporation shall undertake such exercise as early as possible, preferably within a period of 3 (three) months from the date of receipt of this order. It will be for the Corporation to intimate to the petitioners for depositing of the amount due and if such amount is deposited before the

Corporation within a period of one one month from the date of intimation by the Corporation, such area shall be earmarked for ingress and outgress and the amount which may be deposited by the petitioners as indicated hereinabove, shall be paid by the Corporation to the concerned allottees whose land is earmarked for ingress and outgress.

It will be open to the Corporation to direct the petitioners as well as other allottees to pay the balance amount, in case, if it is not paid. It is made clear that this petition is considered only for the purpose of ingress and outgress and in case, if either of the parties moves the Corporation for development permission, it would be open to the Corporation to consider the matter in accordance with law, keeping in mind the ingress and outgress as stated hereinabove.

6. The petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts an circumstances, no order as to costs.

(JAYANT PATEL, J.)

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